

THE COMMONWEALTH OF MASSACHUSETTS
OFFICE OF CAMPAIGN & POLITICAL FINANCE

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DIRECTOR

May 10, 1994
AO-94-15

James E. Tremble, Treasurer
Committee to Re-Elect Sheriff Michael J. Ashe, Jr.
627 Randall Road
Ludlow, MA 01056-1079

Re: Gifts to employees of candidate

Dear Mr. Tremble:

This letter is response to your March 21, 1994 request for an advisory opinion regarding the legality of an expenditure by an incumbent office holder's political committee for gifts to employees of the office holder.

You have stated that Sheriff Ashe receives many invitations to weddings, showers, and other functions hosted by the Sheriff's employees. You have also stated that many of the employees work for the committee "in the one function [the committee] has each year, namely, the clambake."

You have asked if the political committee may properly pay for gifts or tickets to attend affairs hosted by the Sheriff's employees. In particular, where employees do some work for the committee at the annual clambake, can they be rewarded with gifts when the employee subsequently invites the Sheriff to a function?

M.G.L. c. 55, s. 6 provides, in pertinent part, that political committees organized on behalf of candidates for sheriff

may receive, pay and expend money or other things of value for the enhancement of the political future of the candidate . . ., for which the committee was organized so long as such expenditure is not primarily for the candidate's or any other person's personal use, provided, however, that the director shall establish reasonable rules and regulations concerning such expenditures . . . [emphasis added].

Expenditures designed to enhance a candidate's political future, in addition to not being for "personal use," must also bear a reasonable connection to the candidate's nomination or election to office. See M.G.L. c. 55, s. 1.

Pursuant to M.G.L. c. 55, ss. 3 and 6, the office has issued regulations to further define expenditures which may be made by political committees. See 970 CMR 2.06. A review of M.G.L. c. 55 and the regulations leads me to conclude that the

Committee may purchase with campaign funds the gifts described in your letter, if the gifts are of reasonable value, and if the Committee complies with the conditions set forth in 970 CMR 2.06(3)(b).¹

970 CMR 2.06(3)(b) states that campaign funds may be used to pay for a gift where the gift is "of reasonable value" and the expenditure complies with the following conditions:

1. Gifts to campaign workers [may be made] provided that:

- a. the gift accurately reflects the contribution made by those workers to the efforts of the political campaign of the committee; and
- b. the gift is made in a timely fashion as to clearly indicate its purpose is to express gratitude for work done on behalf of the campaign; [and]
- c. no gifts may be made to campaign workers for any other purpose or for any other occasion.

2. [Gifts may be made to persons who are not campaign workers if] the political committee or candidate will receive publicity and foster political goodwill as a result of making the gift or contribution, but provided further that:

- a. the candidate or treasurer has no personal relationship with the individual or his family; and
- b. the gift is appropriate to the occasion which has prompted the gift; and
- c. making such gift is usual and customary practice of the political committee; and
- d. the gift would not be made but for the interest in it enhancing the political future of the candidate or principle for which the committee was organized.

Gifts to campaign workers to express gratitude for work done on behalf of a campaign must comply with the first section of 970 CMR 2.06(3)(b).

¹ Gifts from committees organized to support candidates for governor, lieutenant governor, attorney general, state secretary, treasurer and receiver general, and auditor ("constitutional candidates") are, in general, prohibited as a personal use and may be made only to campaign workers subject to the provisions of 970 CMR 2.05(4)(b); gifts made by all other committees are governed by 970 CMR 2.06(3)(b). Because of the different regulatory provisions this opinion does not apply to gifts from committees organized on behalf of constitutional candidates.

A gift to a campaign worker on the occasion of the campaign worker's wedding or other affair would not be in compliance with the first part of the regulation, since such gifts are, by their very nature and purpose, not given to reflect a campaign worker's contribution or to express gratitude and the regulation prohibits gifts made to campaign workers "for any other purpose or for any other occasion." However, gifts to campaign workers and others, including employees of a candidate, may be made under the second section of 970 CMR 2.06(3)(b), if the gift complies with that section of the regulation.²

Under 2.06(3)(b)2, a gift to a campaign worker, employee, or other person, may be purchased using campaign funds only if: (1) it is of reasonable value; (2) the committee or candidate will receive publicity and foster political goodwill as a result of making the gift; (3) the candidate or treasurer has no personal relationship with the recipient or the recipient's family; (4) the gift is appropriate to the occasion which has prompted the gift; (5) making such a gift is the usual and customary practice of the committee; and (6) the gift would not be made but for the candidate's interest in enhancing the political future of the candidate.

Your letter does not provide sufficient information to apply conclusively the regulations to the proposed gifts. Based on the information you have provided, however, I will consider each requirement separately.³

1. Reasonable value

Your letter does not indicate the value of the gifts to be given. We would interpret "reasonable value" to mean a gift which is within the range of what is generally accepted to be average for the occasion prompting the gift. Therefore, the relative wealth of a particular committee, candidate or recipient of a gift would be irrelevant. See AO-93-17.

2. Publicity

In this office's opinion the Sheriff is likely to receive some kind of publicity and foster goodwill as a result of making the described gifts. In the context of the regulation, we would interpret "publicity" broadly to mean receiving some kind of public recognition, whether formal or informal, of the gift. Giving a gift to a constituent would, in almost any circumstance, result in receiving goodwill in return.

2. If a gift to an employee of the candidate otherwise complies with the second section of this regulation, a political committee may pay for the gift. However, such a gift must be given for the purpose of enhancing the candidate's political future and not for other purposes, e.g. to improve office moral, nor simply because the recipient is an employee.

3. I assume that the recipients of the gifts are constituents, voters, supporters, or other persons who will provide political goodwill as a result of the Committee's giving of a gift.

3. Personal relationship

This office interprets "personal relationship" in the context of the regulation to include relatives and friends including colleagues, employees or other persons with whom the candidate socializes personally. Therefore, a political committee may not pay for a gift given to a recipient who is a family member or friend even if the recipient is also a campaign worker, constituent or supporter. Your letter does not indicate the relationship of the recipient to the candidate.

4. Appropriateness to occasion

Gifts are appropriate to an occasion if the occasion generally calls for providing such a gift. Gifts for weddings, showers or significant anniversaries are appropriate. Gifts may not, however, be appropriate when attending other affairs. Gifts of substantial value are generally not appropriate.

5. Usual and customary practice

You have indicated that giving gifts of the type described is a usual and customary practice of the committee and that the gifts would not be made but for the Sheriff's interest in enhancing his political future.

6. Enhancement of political future

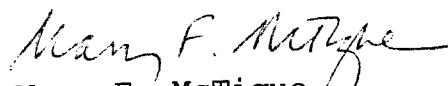
Attending a constituent's or a campaign worker's wedding, shower, or other event would likely enhance the Sheriff's political future. Moreover, any gift associated with attending the wedding or other event might primarily be for political reasons rather than for the personal benefit of the recipient, and such expenditure might reasonably be connected to the candidate's election.

Political committees should give careful attention to insure that each specific gift conforms to the regulations cited and should maintain records and keep copies of documents which would indicate compliance.

This opinion has been rendered solely in the context of M.G.L. c. 55. Sections 13 through 15 of M.G.L. c. 55 restrict solicitation, receipt, and delivery of contributions by public employees and fundraising in buildings occupied for municipal or county purposes. Although you have not asked for advice regarding these provisions of the campaign finance law, I have enclosed a campaign finance guide concerning the participation of public employees in the political process, for your information. You should particularly note that public employees should not be engaged in campaign activities during work hours.

Please do not hesitate to contact this office if you have any additional questions.

Very truly yours,


Mary F. McTigue
Director

MF:GB/cp
Enclosure